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Trow & Rahal Newsletter

May 2023

Welcome to our May newsletter. In this month's newsletter we review suspected fraud in the H-1B Cap lottery, the June 2023 Visa Bulletin, I-9 and Covid-19 Vaccine requirements.

On May 1, T&R celebrated its 30th anniversary! We continue to be grateful and honored for our clients, referral sources and colleagues in the immigration bar. We could not have succeeded without all of you. Thank you!



SUSPECTED FRAUD IN THE H-1B CAP LOTTERY

The number of registrations in the H-1B cap lottery increased by 61% in March 2023 compared to the lottery held in 2022, raising serious concerns regarding the integrity of the H-1B cap lottery system. This year the USCIS received 780,884 registrations for

the H-1B cap lottery compared to 483,927 last year (which was up 57% from 308,613 the year before). The USCIS has already started fraud investigations and threatens to deny or revoke petitions where they suspect fraud. They are allowed to deny a petition, or revoke an approval, if an H-1B registration included a false attestation or if it was not properly submitted.

Second H-1B selection: Due to possible denials or revocations of registrations or petitions, we might see a second selection in the H-1B lottery later this year between August and September.

H-1B modernization rule: The USCIS is also working on an H-1B modernization rule that will include changes to the H-1B registration process to reduce or eliminate misuse or fraud.

JUNE 2023 VISA BULLETIN RELEASED

The U.S. Department of State released the visa bulletin for June and the USCIS has indicated that it will use “Final Action Dates” for employment-based cases and “Dates of Filing” for family-based cases. There is not a lot of change in the June visa bulletin for employment cases from last month except retrogression in EB-5 India and retrogression in the “all other” category for EB3 Professional and Skilled workers. Here is a brief overview of the Final Action Dates for the employment categories:

- **EB-1:** Remains current for all countries except India and China (remaining at Feb 1, 2022).
- **EB-2:** Further retrogresses for “all other countries” from July 1, 2022 to February 1, 2022. India and China remain the same: India remains at Jan 1, 2011 and China remains at June 8, 2019).
- **EB-3: Professional and Skilled workers:** “All other countries” retrogresses to June 1, 2022. India and China remain the same: India remains at June 15, 2012, and China remains at April 1, 2019).
- **EB-5:** Remains current except for EB-5 unreserved categories: India retrogresses to April 1, 2017, and China remains at September 8, 2015. All EB-5 “set-aside” categories (rural, High Unemployment, and Infrastructure) remain current.

See the complete June 2023 visa bulletin [here](#)

Future retrogression: Due to high demand, we can expect to see further retrogression in EB-3 India in coming months. Anyone in this category who can file an I-485 application should do so before the end of June. It is also anticipated that we will continue to see further retrogression in the EB-1, EB-2 and EB-5 categories for India

and China.

EMPLOYERS GIVEN 30 DAYS TO COMPLY With I-9 REQUIREMENTS

Announced on May 4th by the U.S. Department of Homeland Security (DHS), the Covid-19 I-9 flexibilities will end on July 31, 2023. U.S. Immigration and Customs Enforcement (ICE) simultaneously announced that employers must complete in person inspection of documents for I-9 documents by August 30, 2023. This gives employers an extra 30 days to conduct physical examination of identity and employment authorization documents for employees hired on or after March 20, 2020 if the I-9s were conducted virtually.

Covid-19 flexibilities implemented by the (DHS) in March 2020 allowed employers to defer the in-person inspection of documents. Now, with the resumption of normal business operations, employers will be required again to review documents in person within 3 business days for new hires starting August 1, 2023.

Further guidance is still expected on how to implement this under different or unique circumstances such as if the foreign national has a different status or new I-9 document than when the initial one was completed. In this situation, the person won't be able to inspect the same I-9 documents. T&R will provide updates when available.

UPDATES ON COVID-19 VACCINATION REQUIREMENTS

Covid vaccinations no longer required for air travel: The Center for Disease Control (CDC) announced that as of May 12, 2023, passengers traveling by airplane to the United States from foreign countries will no longer need to show proof of Covid-19 vaccine. This means that anyone, including people who are not citizens of the United States, are able to travel by plane without showing that they have had the Covid-19 vaccine.

One dose vaccine requirement for immigrants: The CDC also updated its Covid-19 vaccination requirement on its Immigrant, Refugee, and Migrant Health webpage to show that applicants for a green card or immigrant visa must receive one dose of the Covid-19 Vaccine for the medical exam, but do not need to show that they have received a series of vaccines. Applicants who show that they received any approved Covid-19 series prior to the exam require no additional covid-related vaccinations for immigration purposes.

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